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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

UNITED VAN LINES, INC.,
Petitioner,
vs.
WORKERS COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, JEANETTE P. SHULDA, JOHN SHULDA, CITIZENS MOVING AND STORAGE, ROYAL INSURANCE COMPANY, AND CALIFORNIA UNINSURED EMPLOYERS FUND,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION TWO

RESPONDENTS, ROYAL INSURANCE COMPANY AND CITIZENS MOVING AND STORAGE, BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This case has been plagued with inconsistent decisions since its inception. Initially, Jeanette Shulda, who was injured during the course of employment with John Shulda, was provided workers' compensation benefits from John Shulda's workers' compensation carrier, Transit Casualty Company ("Transit"). When benefits were discontinued due to the company's insolvency, Shulda filed a claim with the Workers' Compensation Appeals Board ("WCAB"). There, the workers' compensation judge ("WCJ") found that the California Insurance Guarantee Association ("CIGA") was obligated for Mrs. Shulda's benefits. In addition, the WCJ found specifically that Mr. Shulda was an <u>independent</u>

contractor.

After an appeal by Petition for Reconsideration to the WCAB in San Francisco, California, CIGA was relieved of liability after a surprising determination that the Transit policy was for liability and not workers' compensation. It is not known whether Transit's receiver sought reimbursement for the $400,000.00 in benefits paid to Jeanette Shulda pursuant to what it considered a workers' compensation policy. Thereafter, the California Uninsured Employers Fund (UEF) was saddled with liability and subsequently appealed by Petition for Reconsideration to the WCAB in San Francisco. San Francisco then remanded to the WCJ to decide the issue of employment, an issue which had already been determined

at the trial level by the WCJ when he determined Mr. Shulda was an independent contractor.

On remand, the WCJ completely reversed his decision and classified Mr. Shulda as an employee, thereby implicating United Van Lines, Inc. ("United") and Royal Insurance Company ("Royal") the workers' compensation carrier for Citizens Moving and Storage ("Citizens").

Petitioner, United, has subsequently appealed to this Court.

REASONS THE PETITION SHOULD BE DENIED

I. THE QUESTIONS PRESENTED ARE MOOT IF LIABILITY IS IMPUTED TO UNITED VAN LINES, INC. REGARDLESS OF JOHN SHULDA'S EMPLOYMENT STATUS AND, THEREFORE, THE CASE SHOULD BE REMANDED IN LIGHT OF AN OUTSTANDING ISSUE OF STATE LAW.

Petitioner, United, presents two

questions, the underlying effort of which is to declare that John Shulda was not an employee of United, but rather, an independent contractor. Petitioner assumes that if Mr. Shulda is classified as an independent contractor, United would not be liable for the injuries suffered by Mr. Shulda's, employee Jeanette Shulda.

Respondent, Jeanette Shulda, points out in her Brief in Opposition to Petition that the WCJ stated that since John Shulda was uninsured, both United and Citizens would be liable as his principals, whether or not Mr. Shulda was considered an employee or an independent contractor.

This conclusion by the WCJ flies in the face of well settled California law. (See Cal. Labor Code Section 3353,

Section 3357). Respondents, Royal and Citizens, submit that there is no basis for this conclusion and said conclusion is a violation of due process. The WCJ decided this issue without any procedure whatsoever. There was no trial on this issue and no opportunity to be heard by any party. In fact, no party to the action ever introduced the issue, most likely (since holding that a principal is responsible for providing workers' compensation benefits to the independent contractors it hires), directly contradicts the California workers' compensation system.

The United States Supreme Court specifically addressed this issue in Brinkerhoff-Faris Co. v. Hill 281 U.S. 673 (1930). This Court Stated:

> . . . while it is for the state courts to determine the adjective

> as well as the substantive law of the State, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or its legislature, a State may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it. Id. at 682.

Initially, the WCJ specifically found, after trial, that John Shulda was an independent contractor, thus releasing United and Citizens from any liability. Later, a Petition to Re-open the case was filed by UEF since it was determined that Shulda was uninsured. The Petition was granted and the WCAB returned the matter to the WCJ to determine whether Citizens or United were deemed to be uninsured employers for the purposes of workers' compensation liability.

In a complete reversal of his former

ruling, the WCJ changed his opinion and concluded that Mr. Shulda was an employee of United and Citizens, thus shifting liability to United and Citizens. The WCJ further decided, without precedent or basis in law, that United and Citizens are liable for the injuries to Mr. Shulda's employee whether Mr. Shulda is classified as an independent contractor or an employee.

Respondent maintains that John Shulda was an independent contractor according to the terms of the contract with Citizens and the reality of the relationship between the parties. Respondent further maintains that if any employer/employee relationship existed, that United was Mr. Shulda's employer and not Citizens. For example, the undisputed evidence showed

that Mr. Shulda was required to wear a United uniform, as were his employees. He was required to inform United's dispatcher of his whereabouts. He was subject to fines by United for late pick-ups and deliveries. He was dispatched by United and not Citizens. He could not fill his truck with other tonnage even if he had only a partial United load. He was required to paint his tractor with the United colors and logo. Further, the WCJ stated that United was the defendant with the clearest liability (See Petition, App. B, p. A-20).

Given that the WCJ acted without authority and in violation of due process, Respondents, Citizens and Royal, respectfully request this case be remanded to the WCJ for a

determination of whether liability rests with United and Citizens regardless of Mr. Shulda's classification as an independent contractor or employee, and whether United or Citizens is responsible for providing workers' compensation benefits to the injured.

II. IF JOHN SHULDA IS CONSIDERED AN EMPLOYEE OF UNITED AND CITIZENS, THE DETERMINATION WAS BASED ON A VARIETY OF FACTORS AND FEDERAL REGULATIONS WERE NOT DETERMINATIVE.

Petitioner, United, argues that legal duties imposed by the Department of Transportation ("DOT") and Interstate Commerce Commission ("ICC") regulations constituted key evidence of Mr. Shulda's employment status. As evidence of the WCJ's decision, United cites the WCJ's Opinion, Findings of Fact and Award, July 24, 1990 (Petition, App. E, p.

A-31 to p. A-34).

Citizens and Royal, however, agree with respondent, Jeanette Shulda's argument that the WCJ's decision rested on substantial evidence apart from the DOT and ICC regulations. In addition to Jeanette Shulda's arguments, Citizens wishes to point out that the WCJ specifically commented that some of the DOT requirements were made more stringent by United and there were also requirements that United had but Citizens did not (See Petition, App. E, p. A-31, ft. 2).

Furthermore, Petitioner fails to specify any DOT or ICC regulations which the WCJ allegedly relied on in making his determination. The WCJ cites a great many reasons for Shulda's designation as an employee in his

Opinion and Findings of Fact. None of the reasons are specified as DOT or ICC regulations (See Petition, App E, p. A-24 to p. A-47). Citizens and Royal submit it would be erroneous to determine that the California court based its decision regarding the employment status of John Shulda on compliance with DOT and ICC regulations.

III. IF FEDERAL REGULATIONS COULD NOT BE CONSIDERED IN DETERMINING EMPLOYEE STATUS, MANY TRUCKERS WOULD NOT BE SUBJECT TO ANY WORKER'S COMPENSATION BENEFITS, THEREBY CREATING INTERSTATE CHAOS AMONG INJURED TRUCKERS.

Petitioner indicates that there are 3,000 to 3,500 drivers engaged in interstate transportation under United. In addition, there are a total of approximately 200,000 interstate motor

carriers. To determine that any compliance with ICC and DOT regulations could not be considered in determining employment status would mean that hundreds, if not thousands, of injured truckers would be considered independent contractors and not employees. Thus, a substantial number would have no remedy for injuries occurring during the course and scope of employment. Even those insured could suffer the same fate as John Shulda and be unfortunate enough to insure with an insolvent company.

There must be a party responsible and in control. In the instant case, United provided John Shulda with the ICC permit to operate interstate. ICC regulations require that the permit holder have control over those vehicles

and entities operating under the permit. Citizens had no ICC permit and did not have control over Shulda or his vehicle. Therefore, as the party ultimately responsible and in control, United should be required to deal with the consequences of operating under DOT and ICC regulations.

SUMMARY

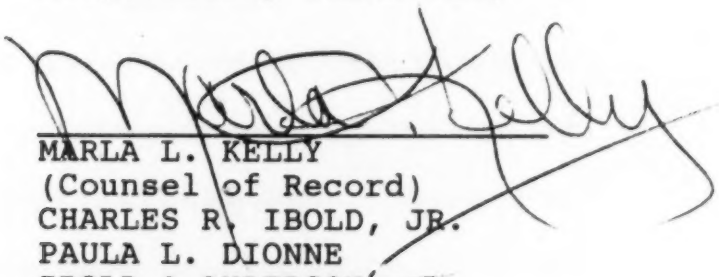
A threshold issue must be addressed which may render the questions presented by the Petitioner moot. Therefore, this case should be remanded to the state level in order to determine the issue of United and Citizens liability if John Shulda is an independent contractor. If the case is not remanded, however, since DOT and ICC regulations did not determine John Shulda's employment status, this

case does not present a federal question.

CONCLUSION

Respondent, Citizens, respectfully requests this case be remanded to determine issues of California law, or, in the alternative, the Petition for Writ of Certiorari be denied.

Respectfully submitted,



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